STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

CENTRALIA SCHOOL DISTRICT, Employer, and AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO and CALIFORNIA SCHOOL EMPLOYEES ASSOCIATION, Employee Organizations.	)	Case No. LA-S-102 (LA-R-327) PERB Decision No. 519 September 12, 1985

Appearances; Reich, Adell & Crost by Anthony R. Segall for American Federation of State, County and Municipal Employees, AFL-CIO; William C. Heath for California School Employees Association.

Before Hesse, Chairperson; Jaeger and Morgenstern, Members.

DECISION

JAEGER, Member: The California School Employees Association (CSEA) appeals a regional office decision that a severance petition filed by the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) was filed during an appropriate window period as defined by Board Regulation 33020 (Cal. Admin. Code, tit. 8, sec. 33020). CSEA also seeks a stay of any further action by the regional office pending resolution of this appeal.

The Board finds that AFSCME's petition was timely filed, adopts the attached decision of the regional office as modified herein, and denies the request for stay.

DISCUSSION

The facts are not in dispute. The sole issue raised is whether separate, new window periods are created by successive contract extensions negotiated before the respective expiration dates.

CSEA's first argument against an affirmative finding is that the employees' right to change their exclusive representative is amply protected by their ability to look to a single, fixed time during which a decertification petition may be filed. "There is no need," CSEA believes, "for dissident employees to look forward to two time-certain window periods in order to plan a decertification [sic] drive without interference." (Emphasis in original.)

CSEA claims that Hertz Corporation (1982) 265 NLRB 1127, cited by the regional office, is distinguishable. There, the National Labor Relations Board held that each new contract extension created a separate window period. CSEA acknowledges the Hertz doctrine but points out that the extension in that case was executed after the close of the window period, whereas here, the extension was executed before the close of the window period created by the original agreement. It is this fact which forms an underpinning for CSEA's view that employees do not need the protection of two window periods.

This argument ignores the obvious possibility that employees, disenchanted with their representative at some later date, could be indefinitely barred by an endless chain of

premature contract extensions from expressing their dissatisfaction through the statutory procedures designed for that purpose.

More directly, CSEA's argument overlooks the underlying purpose of both Hertz and Board Regulation 33020 to preclude the use of premature contract extensions as a means of defeating the employees' statutory rights, as well as providing employees with a clear and certain knowledge of when such rights may be timely exercised. It is for this reason that both the Educational Employment Relations Act (EERA or Act)[1] section 3544.7(b) and Regulation 33020 expressly provide that the window period is that period " . . . which is less than 120 days, but more than 90 days, prior to the expiration date . . ." of the agreement (emphasis added). Each extension constitutes a separate new agreement, and each therefore creates its own new and separate window period.

Finally, we are not persuaded by CSEA's further argument that adoption of its interpretation of the Act is necessary in the interest of "stabilized employer-employee relations." To the contrary, we are more concerned with "promoting improved personnel management in the public school system" (EERA section 3540) by protecting employees against the potential manipulation of contract durations to defeat their right to the free choice of a representative.

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[1]EERA is codified at Government Code section 3540 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

ORDER

Based on the record before it, the Public Employment Relations Board ORDERS that the severance petition filed by the American Federation of State, County and Municipal Employees, AFL-CIO was timely filed, DENIES the request for stay of regional office action made by the California School Employees Association, and DIRECTS the regional office to proceed in accordance with this Decision.

Chairperson Hesse and Member Morgenstern joined in this Decision.

PUBLIC EMPLOYMENT RELATIONS BOARD
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California School Employees Association
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Re: Severance Request, LA-S-102 (LA-R-327)
Centralia School District

Dear Interested Parties:

On April 26, 1985, American Federation of State, County and Municipal Employees (AFSCME or petitioner), filed a request to sever an operations-support services unit from a wall classified unit currently represented by California School Employees Association (CSEA), at Centralia School District (District). On May 17, 1985, the parties were informed by this office that AFSCME had demonstrated sufficient proof of support to meet the requirements of Regulation 33050(b).

The petitioner alleged in its severance request that despite the existence of a contract between CSEA and the District that extends until July 31, 1987, the petition should be deemed timely filed as required by Regulation 33020 due to allegations that the contract had been "prematurely extended." The parties were invited to submit position papers, facts and legal arguments by June 5, 1985. The results of the parties' statements are outlined below.

FACTS

CSEA was recognized as the exclusive representative of all classified employees by the District on May 4, 1976. CSEA and the District negotiated a three-year collective bargaining agreement that was to be in effect and force from August 1, 1981 to July 31, 1984. In the Fall of 1982 the District and CSEA agreed to change the term of the contract from August 1, 1982 to July 31, 1985. In the Fall of 1983 the District and CSEA once again agreed to extend the term of the contract from August 1, 1983 to July 31, 1986. Finally, in the Fall of 1984 the District and CSEA extended the contract's effective date from August 1, 1984 to July 31, 1987. The August 1, 1984 - July 31, 1987 contract is currently the effective contract.

Original Contract	August 1, 1981 to July 31, 1984
Contract Extension 1	August 1, 1982 to July 31, 1985
Contract Extension 2	August 1, 1983 to July 31, 1986
Contract Extension 3	August 1, 1984 to July 31, 1987

ISSUES

1. Do extensions of agreements create new and distinct window periods each time the contracts are extended?

2. Is the instant request filed during an effective window period?

ANALYSIS

Charles Morris' The Developing Labor Law 2nd Ed 1983, Bureau of National Affairs, p.363, suggests that "(t)he duration dates recited on the face of a contract are not always determinative, for the Board will look behind 'inartful drafting' to establish actual contract duration in the light of bargaining history." fa. Youngstown Osteopathic Hosp. Assn. 216 NLRB 766, (1975). In this case it is not the "inartful drafting" that is of concern but the bargaining history as it relates to the contract duration. As articulated by the National Labor Relations Board:

> The basic purpose of the premature extension doctrine is to protect employee's freedom of choice in the selection of bargaining representatives by insuring them the right to select, reject, or change representatives at reasonable and predictable intervals of time. This policy thus supplements the other primary purpose of the Act - to promote stability in industrial relations - by making it possible for employees and rival unions to determine on the basis of an existing contract when a question concerning representation may be raised, regardless of any extension or renegotiations of the contract during its term. Stubnitz Greene Corporation 116 NLRB 967 (1956).

The PERB found in Hayward Unified School District, PERB Decision No. Ad-96, (1980), that it would extend the premature extension doctrine to protect employees' ". . . fundamental right to know when they can organize to seek a change in their exclusive representative."

The PERB further defined its position recently when in San Francisco Unified School District PERB Decision No. 476, (1984) it stated that:

> The premature extension doctrine renders an agreement to extend a contract invalid as a contract bar in those instances where the extension eliminates an established window period during which employees could count on a time-certain opportunity to exercise a basic but limited right. (footnotes omitted)

The question raised by the instant request is whether the annual extensions of the contracts between CSEA and the District established separate and distinct window periods and provided a time-certain for employees to exercise their rights.

CSEA, in its June 5, 1985 response, argues circuitously that when the April, 1984 window period closed on the initial three year contract, and before the additional one year extension was reached in the Fall of 1984, employees could not have mounted a decertification drive relying on the 1982-1985 extension because an extension had already been reached in the Fall of 1983 to extend the contract until 1986. CSEA concedes that a petition filed in the period from April 3, 1986 through May 1, 1986 will not be barred by the 1984-1987 contract. In other words, employees had the opportunity to file in the April 1984 window period, have the opportunity to file in the April, 1986 window period, and if another one year or more extension is reached before the terms of the contract become effective, the employees will have the opportunity to file in the 119-91 day period prior to the expiration of that contract, if not in 1987.

In a similar decision recently issued by the NLRB, the National Board found that an extended contract provided its own window period even if subsequent to the extension but prior to the expiration of that extended contract the parties entered into another extension beyond the date of the original extension. (See The Hertz Corporation, 265 NLRB 1127 (1982))

In Hertz, supra, the employer and the union negotiated a three year agreement effective February 1, 1978 to February 1, 1981. In November 1978 the parties extended the agreement to November 1981. Before the expiration of the first extension the parties reached a new agreement effective from February 1, 1981 to November 13, 1984.

A bargaining unit member filed a decertification petition on September 9, 1981, during the window period created by the first extension. The incumbent union wished to bar the petition due to the February 1981 - November 1984 contract. The NLRB rejected the contract bar contention, found that the first extension of the contract created a valid window period, and ordered that an election be conducted. Id. at 1127-28.

FINDINGS

The annual one year extensions of the contract between CSEA, and the District created distinct and separate window periods. PERB policy is clear that:

> The premature extension doctrine renders an agreement to extend a contract invalid as a contract bar in those instances where the extension eliminates an established window period during which employees could count on a time certain opportunity to exercise a basic but limited right. San Francisco Unified School District (1984) PERB Decision No. 476.

Therefore, the instant request filed by AFSCME during *the* window period of the first extension of the contract Is deemed to be timely filed.

An appeal of this decision pursuant to PERB Regulation 32350 may be made within 10 calendar days following the date of service of this decision by filing an original and 5 copies of a statement of the facts upon which the appeal is based with the Board itself at 1031 18th Street, Suite 200, Sacramento, CA 95814. Copies of any appeal must be concurrently served upon all parties and the Los Angeles Regional Office. Proof of service pursuant to Regulation 32140 is required.

I will contact you shortly in order that we discuss the appropriateness of the petitioned for unit.

Sincerely,

Robert R. Bergeson
Regional Director

Roger Smith
Labor Relations Specialist

cc: William B. Heath
Steven J. Andelson
Anthony R. Segall